

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0532P
Withholding Tax
For Periods January 2007-April 2007

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ISSUE

I. Tax Administration--Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

The taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The taxpayer was assessed a ten percent negligence penalty for the late payment of withholding taxes for the periods ending January 31, 2007, through April 30, 2007. Taxpayer protested the penalty assessment.

I. Tax Administration--Ten Percent Negligence Penalty.

DISCUSSION

The taxpayer protests the imposition of the ten percent negligence penalty imposed for the late filing of its withholding tax returns pursuant to IC § 6-8.1-10-2.1.

IC § 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer."

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

The taxpayer asserts that it had a “glitch” in its electronic funds transfer arrangement. There is no evidence that the Department was aware of the taxpayer’s failure to make the electronic funds transfers. According to information available to the Department, whenever an electronics fund transfer is made, the payment is deducted at a designated time. The taxpayer did not provide evidence that it was noticed—or failed to notice—the lack of a deduction from its accounts. Thus, the “glitch” does not provide sufficient legal or factual grounds to justify penalty waiver.

FINDING

The taxpayer’s protest is denied.

JR/BK/DK January 29, 2008